



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/162068

PRELIMINARY RECITALS

Pursuant to a petition filed November 17, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on December 10, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that petitioner is liable for two overpayments: the first for \$6,432.64 for the months of April 2013 through February 2014, and the second for \$651.25 for the month of June 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Keisha Love

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. The agency obtained various documents reflecting [REDACTED] [REDACTED]'s residence at the same address as petitioner including new hire reports from employers dated 2/10/14, 7/1/14, 10/28/13. The Department also obtained DOT record showing [REDACTED] [REDACTED]'s address at [REDACTED] in April 2014. A lease dated 10/28/13 places both [REDACTED] and petitioner as renters at [REDACTED] [REDACTED]
3. On 10/1/14 the agency issued two CC overpayment notices. The first was for \$6,432.64 for the months of April 2013 through February 2014. The second was for \$651.25 for the month of June 2014.
4. Petitioner appealed.

DISCUSSION

First, I find the request for hearing timely as it was mailed on Monday the 17th of November per the postmark on the envelope (see ex. # 2). The 45th day following the effective date of the notice was Saturday the 15th. As mailing is considered "filing" under the Admin Code Chapter HA 1, I find this to be a timely request.

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, §DCF 101.26(1).

The agency relies on its determination that there was a second parent in the household who could have been providing child care during the overpayment periods.

Petitioner argued that [REDACTED] was named on the lease but did not live in the apartment. Petitioner explained that he agreed to be on the lease because she did not have a reliable income and needed him to be on the lease in order to get the apartment. She then explained that even though she and [REDACTED] now show residence at [REDACTED], [REDACTED] has his own separate apartment. When asked what apartment number she lived in petitioner stated that she lives in [REDACTED]. When asked what apartment [REDACTED] lives in petitioner seemed confused and paused quite a while. She then stated she was not sure but that it may be [REDACTED]. I note that the DOT record for [REDACTED] indicates his address as [REDACTED]. This is also the address listed on the July 1, 2014 new hire report from [REDACTED]. Petitioner was not credible and I am persuaded that the paper records demonstrate a pattern of co-habitation.

Based upon the rules I must find that the agency correctly is seeking recovery of the child care paid for petitioner in April 2013 through February 2014, and in June 2014.

CONCLUSIONS OF LAW

Petitioner was overpaid child care because it was paid when the second parent was in the household and not in an approved activity.

THEREFORE, it is **ORDERED**

That the petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 5th day of March, 2015

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 5, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud